



US Army Corps
Of Engineers
Seattle District

Information Paper

Date: May 14, 2002

Endangered Species Act (ESA) Section 7 Consultation Process For Department of the Army Permit Applications¹

In accordance with Section 7 of the Endangered Species Act (ESA), the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch (Corps) shall consult with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS)² on any proposed application for a Department of the Army permit - including Nationwide Permit - that may affect a federally listed species or it's designated critical habitat. Specifics of this consultation process are set forth in 50 CFR Part 402 "Interagency Cooperation - Endangered Species Act of 1973, as Amended". There are two consultation processes under the ESA, informal consultation and formal consultation. You may check the status of the ESA consultation at NMFS via their website - www.nwr.noaa.gov. When entering your Corps reference number, be sure to enter the number in the following format - 2003-4-00976.

Informal Consultation - When the Corps has determined that a proposed activity will not result in an adverse affect³ to a listed species or critical habitat (which leads to a determination of "may affect, not likely to adversely affect") ESA provides a shortened coordination process called "informal consultation". The process is as follows -

Step 1. The Corp initiates consultation with the Services by written request enclosing sufficient biological information, such as a biological evaluation (BE).⁴

Step 2. With a goal of responding within "30 days", the Services review the BE for completeness and then issue a letter of concurrence to the Corps, request additional information/recommend project alterations, or issue a letter of nonconcurrence. The Corps will initiate "formal consultation" if the Services do not respond to the informal consultation. The Corps is working with the Services to develop reasonable timeframes for informal consultations.

Letter of Concurrence. If the Services provide a "letter of concurrence", the Corps will finalize the permit decision.

Request for Additional Information/Recommend Project Alterations. The Services may request additional information from the Corps to clarify the proposed project and it's potential impacts or may recommend project alterations to minimize impacts. These requests may occur via a telephone conversation between the Services and the Corps, written requests, or direct coordination with the applicant. Any additional information or project alterations provided by the applicant are sent to the Corps and then forwarded to the Services.

¹The Corps has solicited comments from the FWS and NMFS on this information paper. Certain processes outlined in this paper are proposed by the Corps, as the lead federal agency, and are not necessarily advocated by FWS and NMFS.

²FWS and NMFS are jointly referred to as "the Services".

³"Adverse affect" is defined as when a listed species or designated critical habitat is negatively impacted as a direct or indirect result of the proposed action or its interrelated or interdependent actions. The negative impacts are not insignificant or discountable. [ESA Section 7 Consultation Handbook, by NMFS and USFWS, dated March 1998]

⁴The required biological information for Section 7 Consultation is outlined in 50 CFR 402.12.

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